

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:

Bolinger Farms

Serve:

**Mr. Kent Bolinger
Mr. Greg Bolinger**

)
)
)
)
)
)
)
)
)
)

Order No. 2015-WPCB-1342

ABATEMENT ORDER ON CONSENT

NOTICE TO RECIPIENTS OF ABATEMENT ORDERS ON CONSENT

The issuing of this Abatement Order on Consent (AOC) No. 2015-WPCB-1342, by the Department of Natural Resources, is a formal administrative action by the state of Missouri and is being issued because Mr. Kent Bolinger and Mr. Greg Bolinger (Respondents) violated the Missouri Clean Water Law (MCWL). This AOC is issued under the authorities of Sections 640.130, 640.131, 644.056 and 644.079, RSMo. Failure to comply with this AOC is, by itself, a violation of the MCWL Section 644.076.1, RSMo. Litigation may occur without further administrative notice if there is not compliance with the requirements of this AOC. This AOC does not constitute a waiver or a modification of any requirements for the MCWL, or its implementing regulations, all of which remain in full force and effect. Compliance with the terms of this AOC shall not relieve the Respondents of liability for, or preclude the department from, initiating an administrative or judicial enforcement action to recover civil penalties for any future violations of the MCWL, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

FINDINGS OF FACT

1. The Respondents own and operate a Class IC Confined Animal Feeding Operation (CAFO), as defined by 10 CSR 20-6.300, located approximately ½ mile south of the intersection of Highway MM, Walking Horse Road, and Flag Spring Rd, in Moniteau County, Missouri. The receiving stream for stormwater discharges from Bolinger Farms is a tributary to North Moreau Creek.
2. Section 644.051.1(1) makes it unlawful for any person to cause pollution of any waters of the state or to place or cause or permit to be placed any water contaminant in a location where it is reasonably certain to cause pollution of any waters of the state.
3. Section 644.051.1(2) makes it unlawful for any person to discharge any water contaminants into any waters of the state which reduce the quality of such waters below the water quality standards established under Chapter 644.
4. Section 644.051.2 makes it unlawful for any person to build, erect, alter, replace, operate, use or maintain any water contaminant or point source in this state that is subject to standards, rules, or regulations promulgated pursuant to the provisions of Sections 644.006 to 644.141 unless such person holds a permit under Chapter 644.
5. Pursuant to 10 CSR 20-6.300, the department hereby finds that Bolinger Farms is a CAFO that must obtain and maintain coverage under either a state NPDES permit or a state no-discharge operating permit pursuant to 10 CSR 20-6.300(2)(B).
6. North Moreau Creek and its tributaries are waters of the state as the term is defined by Section 644.016(27), RSMo.

7. Sediment is a water contaminant as the term is defined by Section 644.016(24), RSMo.

8. On May 13, 2014, department staff conducted a complaint investigation of the site. Staff observed large un-vegetated feedlots on both sides of Highway MM and evidence of sediment discharges from Bolinger Farms in the road ditch along the west side of Highway MM. Mr. Kent Bolinger informed department staff that more than 1,000 head of beef cattle were confined in the un-vegetated lots. The CAFO does not have the necessary Missouri State Operating Permit (MSOP), for the operation as required by the MCWL.

9. On May 28, 2014, department staff conducted a follow-up investigation of the site. Staff observed that approximately 100 acres contained less than 50 percent vegetative cover and would meet the definition of a CAFO.

10. On June 17, 2014, the department issued Notice of Violation (NOV) No. NER2014061111354170 to Mr. Kent Bolinger for violations observed during the May 13 and 28, 2014, investigations. The NOV offered the Respondents a chance to meet to discuss the actions required to bring the CAFO into compliance with the MCWL.

11. On July 8, 2014, the department received correspondence from Mr. Kent Bolinger stating that the Respondents had removed cattle from two pens to plant grass in the areas and had taken soil and manure samples.

12. On September 5, 2014, the department received a Natural Resources Conservation Service (NRCS) Conservation Plan from the Respondents.

13. On January 6, 2015, department staff conducted a follow-up inspection of the site. Mr. Greg Bolinger informed staff that approximately 1,375 head of cattle were currently in the feedlot.

14. On February 4, 2015, the department issued NOV No. NER2015012011274122 to the Respondents for violations observed during the January 6, 2015, inspection. The NOV offered the Respondents a chance to meet to discuss the actions required to bring the CAFO into compliance with the MCWL.

15. On February 23, 2015, the department received correspondence from the Respondents stating that they are working toward reducing the number of cattle to less than 1,000 and are implementing the NRCS Conservation Plan by fencing waterways and working to establish vegetation.

16. The MCWL and Section 644.096, RSMo, authorize the state, or any political subdivision or agency to recover actual damages, including all costs and expenses necessary to establish or collect any sums under Sections 644.006 to 644.141, RSMo, and the costs and expenses of restoring any waters of the state to their condition as they existed before the violation, sustained by it because of any violation.

17. The department dispatched employees to investigate the May 13, 2014, complaint report. In doing so, the department incurred costs and expenses, including but not limited to, water sampling and analysis and travel expenses. These costs incurred by the department total \$2,494.48.

18. Section 644.076.1, RSMo makes it unlawful to violate the MCWL and regulations promulgated pursuant thereto and establishes penalties up to \$10,000.00 per day per violation.

STATEMENT OF VIOLATIONS

The Respondents have violated the MCWL and its implementing regulations as follows:

19. Respondents discharged water contaminants into waters of the state which reduced the quality of such waters below the Water Quality Standards established by the Missouri Clean Water Commission, in violation of Sections 644.051.1(2) and 644.076.1, RSMo, and 10 CSR 20-7.031 or applicable subsection of 10 CSR 20-7.031.

20. Respondents caused pollution of the tributary to North Moreau Creek, waters of the state, or placed or caused or permitted to be placed water contaminants in a location where it is reasonably certain to cause pollution of waters of the state, in violation of Sections 644.051.1(1) and 644.076.1, RSMo.

21. Since/On May 13, 2014, Respondents operated, used, or maintained a water contaminant source, animal waste from a cattle feedlot, which discharged to a tributary to North Moreau Creek, waters of the state, without an MSOP, in violation of Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.300(2)(B).

CORRECTIVE ACTIONS

22. The department and the Respondents desire to amicably resolve all claims that may be brought against the Respondents for violations alleged above in Statement of Violations.

23. The provisions of this AOC shall apply to and be binding upon the parties executing this AOC, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under; through; or for the parties. Any changes in ownership or corporate status, including but not limited to any

transfer of assets or real or personal property, shall not affect the responsibilities as the Respondents under this AOC.

24. The Respondents, in compromise and satisfaction of the department's claims relating to the above referenced violations, agree, without admitting liability or fault, to pay a penalty in the amount of \$10,350.00. The department and the Respondents further agree that \$7,850.00 of the civil penalty shall be suspended as described in Paragraph 25 below. The payment in the amount of \$2,500.00 shall be in the form of a check made payable to the "*Moniteau County Treasurer, as custodian of the Moniteau County School Fund*" and is due and payable upon execution of this AOC by the Respondents. The check and the signed copy of this AOC shall be delivered to:

Accounting Program
Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0477

25. The suspended penalty described in Paragraph 24 in the amount of \$7,850.00 shall be suspended for a period of two years from the execution of this AOC upon the condition that the respondents do not violate the terms of the AOC. Upon determination that the Respondents have failed to meet the terms of this AOC, including the requirements of Paragraphs 27 and 28, the department shall send a written demand for the suspended penalty to the Respondents. The Respondents shall have 15 days from receipt of the written demand to submit the suspended penalty to the address listed in Paragraph 24.

26. The Respondents agree and are ordered to pay the state's investigative costs in the amount of \$2,494.48 in the form of a check made payable to the "State of Missouri." The check

in the amount of \$2,494.48 is due and payable upon execution of this AOC by the Respondents.

The check shall be delivered to:

Accounting Program
Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0477

27. Within 30 days of the effective date of this AOC, the Respondents are ordered and agree to reduce the number of cattle below 1,000 head of confined cattle.

28. Within 60 days of the effective date of this AOC, the Respondents are ordered and agree to fully implement the Conservation Plan developed by the Natural Resource Conservation Service, including:

- a. Developing a written Comprehensive Nutrient Management Plan;
- b. Installing barriers to exclude animals to protect water quality;
- c. Establishing vegetation on severely eroding areas;
- d. Constructing a fence to use as a barrier to wildlife, livestock, and/or people; and
- e. Establishing herbaceous cover consisting of grasses, grass-like plants, and forbs along riparian areas.

29. Within 15 days of the completion of the above corrective actions, the Respondents are ordered and agree to submit to the department documentation, including photographs and descriptions, of the improvements made to the operation.

30. If the number of confined cattle exceeds 1,000 head at any time in the future, or pollutants are discharged into waters of the state through man-made ditch, flush system or

similar man-made device the Respondents are ordered and agree to apply for and obtain a CAFO operating permit from the department.

31. The Respondents agree to allow the department, through its authorized representatives, right of entry into any facility covered by this AOC, at all reasonable times, upon presentation of credentials, to:

- a. Monitor the progress of activities required under this AOC;
- b. Verify any data or information submitted to the department in accordance with the terms of this AOC;
- c. Obtain samples and upon request, splits of any samples taken by respondents or their representatives, contractors, or consultants;
- d. Obtain documentary evidence, including photographs and similar data; and Assess respondent's compliance with this AOC.

32. The Respondents are ordered and agree to comply with the MCWL, Chapter 644, RSMo, and its implementing regulations at all times in the future.

SUBMISSIONS

33. All other documentation submitted to the department for compliance with this order shall be submitted within the timeframes specified to:

Ms. Lauren Lewis
Department of Natural Resources
Water Protection Program
Compliance and Enforcement Section
P.O. Box 176
Jefferson City, Missouri 65102-0176

OTHER PROVISIONS

34. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the Respondents shall notify the department by telephone or electronic mail i) identifying the deadline that will not be completed; ii) identifying the reason for failing to meet the deadline; and iii) proposing an extension to the deadline. Within five days of notifying the department, the Respondents shall submit to the department for review and approval a written request containing the same information. The department may grant an extension if it deems appropriate. Failure to submit a written notice to the department may constitute a waiver of the Respondents' right to request an extension and may be grounds for the department to deny the extension.

35. Should the Respondents fail to meet the terms of this AOC, including the deadlines for activities set out in Paragraphs 27 through 29, the Respondents shall be subject to pay stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$100.00 per day
31 to 90 days	\$250.00 per day
91 days and above	\$500.00 per day

Stipulated penalties will be paid in the form of a check made payable to "Moniteau County Treasurer, as custodian of the Moniteau County School Fund". Any such stipulated penalty shall be paid within ten days of demand by the department and shall be delivered to:

Accounting Program
Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0477

36. Compliance with this AOC resolves only the specific violations described herein, and this AOC shall not be construed as a waiver or modification or any other requirements of the

MCWL and regulations, or any other source of law. Nor does this order resolve any future violations of this order or any law or regulation. Consistent with 10 CSR 20-3.010(5), this order shall not be construed as satisfying any claim by the state or federal government for natural resource damages.

37. Nothing in this AOC forgives the Respondents from future non-compliance with the laws of the state of Missouri, nor requires the department or state of Missouri to forego pursuing by any legal means any non-compliance with the laws of the state of Missouri. The terms stated herein constitute the entire and exclusive agreement of the parties. There are no other obligations of the parties, be they express or implied, oral or written, except those within are expressly set forth herein. The terms of this AOC supersede all previous memoranda or understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.

38. By signing this AOC, all signatories assert that they have read and understood the terms of this AOC, and that they have the authority to sign this AOC on behalf of their respective party.

39. The effective date of the AOC shall be the date the department signs the AOC. The department shall send a fully executed copy of this AOC to the Respondents for their records.

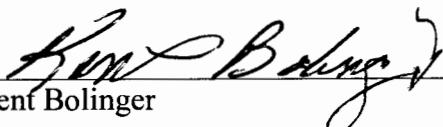
NOTICE OF APPEAL RIGHTS

39. By signing this AOC, the Respondents consents to its terms and waive any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, 644.079.2, Chapter 536 RSMo,

644.145, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), the Missouri Constitution, or any other source of law.

SIGNATURE AUTHORITY


Agreed to and Ordered this 30 day of September, 2015


Kent Bolinger

Agreed to and Ordered this 30 day of September, 2015


Greg Bolinger

Agreed to and Ordered this 13th day of October, 2015


DEPARTMENT OF NATURAL RESOURCES
John Madras, Director
Water Protection Program

Copies of the foregoing served by certified mail to:

Mr. Kent Bolinger
Mr. Greg Bolinger
32948 Highway MM
California, MO 65018

CERTIFIED MAIL # 7012 2920 0002 0660 5187

c: Ms. Diane Huffman, Environmental Protection Agency
Ms. Irene Crawford, Northeast Regional Office
Mr. Jack McManus, Missouri Attorney General's Office
Missouri Clean Water Commission
Accounting Program